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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,631	02/19/2004	Roy E. Guess	3620-071-01	5106
33432 7590 06/15/2007 KILYK & BOWERSOX, P.L.L.C. 400 HOLIDAY COURT SUITE 102 WARRENTON, VA 20186			EXAMINER JUSKA, CHERYL ANN	
			ART UNIT 1771	PAPER NUMBER
			MAIL DATE 06/15/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/782,631

Applicant(s)

GUESS, ROY E.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/04, 8/04, 10/05</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4-7, 11, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 4-7 and 11 are indefinite for the use of the term "unused yarn." It is unclear how the yarns can be "unused" while they are being employed in the carpet of claims 1 and 10.
4. Claim 22 is also indefinite for the use of the phrase "wherein said yarn comprises a nylon, a wool, a polyester, and a polypropylene." First, it appears said yarn must comprise all four materials due to the recitation of "and." Secondly, the phrase raises the question of "A nylon what?" Nylon fiber? Nylon polymer? The same goes for the recited wool, polyester, and polypropylene.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 1-15, 25, 26, 30, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0031821 issued to Oakey et al.

Oakey discloses carpet tiles having patterns and color schemes that obviate the need to orient the tiles in a particular positional or rotational relationship to one another (abstract). The carpet tiles comprise tufted rows of two patterns, wherein the first pattern comprises yarns of A, B, C, and D, while the second pattern comprises yarns of D, E, F, and G (sections [0048], [0049], and claim 3). In one embodiment, the first gauge pattern is formed on 1/8 gauge needles, while the second pattern is formed on 1/4 gauge needles (sections [0048] and [0049]). Even though different lots of yarns of different colors are employed, the carpet tiles present a visually consistent appearance while masking color variations resulting from different dye lots (section [0016] and [0030]). The yarns may include a barber pole yarn, single color, or spaced dyed yarn (section [0047]). Additionally, the A, B, and C yarns of the of the first pattern (i.e., background) may have similar intensities (section [0051]).

Thus, Oakey teaches the presently claimed invention with the exception of (a) the specific Munsell value scale and colors for yarns A-H and (b) at least one of yarns A-H comprising at least two different types of yarn. With respect to the latter exception, it is argued that yarns from different dye lots meet the limitation of at least one of yarns A-H comprising at least two different types of yarn.

Regarding the former exception, the claimed Munsell value scale is but one of many quantitative methods of measuring color. As such, it is difficult to make a direct comparison of the prior art with the present invention. For the purposes of examination, the claimed Munsell values represent two groups of colors: darker colors corresponding to the Munsell values of 1-5

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and lighter colors corresponding to the Munsell values of 6-10. However, the limitations to color hue and value are deemed obvious over the prior art. Specifically, it would have been obvious to one skilled in the art to select various color hue and level combinations within each pattern in order to produce a variety of aesthetically pleasing designs. In *In re Seid*, 73 USPQ 431, the court found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. In the present case, the claimed combinations of color hues and values do not materially affect the mechanical function of the carpet or carpet tiles. Rather, said color designs merely provide aesthetically pleasing carpets and tiles that can be made from recycled yarns (i.e., post-industrial waste yarns). The function of the carpet or tiles does not depend upon the chosen pattern or yarn color combinations. Therefore, claims 10, 12-15, and 30 are rejected as being obvious over the cited prior art.

Claims 1-3, 8, 9, and 25 are also rejected since it would have been obvious to one of ordinary skill in the art to select patterns having any number of differently colored yarns (e.g., three, four, five, etc.) depending upon the desired aesthetic design.

Regarding claims 4-7 and 11, for the purposes of examination, the term “unused” is not given patentable weight since once a yarn is employed for the carpet it becomes “used” rather than “unused.” In the event the term “unused” is given patentable weight as descriptive of post-industrial waste yarn, the claims are rejected as being obvious over the prior art in that selection of virgin versus recycled material is within the level of ordinary skill in the art. Recycling materials have the benefit of low cost and being environmentally friendly. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its

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suitability for the intended use. *In re Leshin*, 125 USPQ 416. Thus, claims 4-7 and 11 are also rejected.

While Oakey fails to explicitly teach suitable stitch rates, claims 26 and 31 are rejected as being obvious over the prior art. Specifically, it would have been obvious to one skilled in the art to employ the claimed stitch rate, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Hence, claims 26 and 31 are also rejected.

7. Claims 16-20, 22-24, and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0031821 issued to Oakey et al. in view of US 4,522,857 issued to Higgins.

While Oakey fails to explicitly teach the carpet construction including pile, pre-coat, polymer layer, reinforcement layer, secondary backing, and polyurethane foam cushion backing, said constructions are well known in the art of carpet tiles. For example, Higgins teaches the following at col. 1, line 27 – col. 2, line 6:

The carpet tile 10 basically consists of the primary carpet base 12 and the foam layer 14. The primary carpet base 12 is laminated to the foam layer 14 by an adhesive layer 16 in which is embedded a layer of glass scrim 18 to provide dimensional stability to the tile 10 when the adhesive layer 16 has been solidified to provide a unitary structure.

The carpet base layer 12 consists of a loop pile layer 20 of a thickness in the range of 1/8"-1" created by tufting nylon continuous fibers into a primary backing 22 of woven polyester. To bond the tufts of nylon in position on the backing 22, a precoat of latex 24 is applied.

As described above, the loop pile layer 20 is preferably nylon but other suitable synthetic yarns such as polyester, polypropylene, acrylic or blends thereof can be employed. The backing layer 22 is preferably woven but could be non-woven and/or of other synthetic material such as nylon, fiberglass or polypropylene. The latex layer 24 is preferably styrene butadiene but other suitable materials such as urethane, PVC, acrylic, etc., could be employed.

The adhesive layer 16 is a layer with a thickness in the range of 0.010"-0.070" of polyolefin, modified polyolefin, polyamide or other suitable thermoplastic material with a weight in the range of 10-70 oz./sq. with the preferred weight being about 50 oz./sq.

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yard. The embedded stabilizing material is glass scrim but could be a woven or non-woven material of glass or other suitable material such as polyester, nylon or polypropylene.

The foam layer 14 is approximately 5/32" in thickness and consists of a 0.020" fibrous carrier backing 26 of woven polypropylene coated with a high density urethane foam 28 having a tough integral skin surface 30 on the underside thereof.

The carrier backing 26 can be woven or non-woven and composed of other materials such as nylon, polyester or fiberglass. The thickness of this layer can vary in the range of 0.01"-0.04".

The foam layer 28 can vary in thickness from 0.1" to 1.0" and is preferably a high density urethane but suitable equivalents such as styrene butadiene latex or PVC can be used, if desired. The applied foam can vary from about 10 oz./sq. yd. to about 60 oz./sq. yd. but preferably is about 38 oz./sq. yd.

Hence, the features of claims 16-20, 22-24, and 27-29 are readily known and understood in the art of carpets. As such, selection of said features is within the level or ordinary skill in the art motivated by the desire to produce a durable and dimensionally stable carpet construction.

Therefore, said claims are rejected over Oakey in view of Higgins.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0031821 issued to Oakey et al. in view of US 4,522,857 issued to Higgins as applied to claim 17 above and in further view of US 5,540,968 issued to Higgins.

While Oakey and Higgins '857 fail to teach an adhesive located on the back of carpet tiles, it is well known in the art to employ adhesive backings in order to facilitate installation of the carpet tiles. For example, see Higgins '968, col. 6, lines 55-60, which teaches an adhesive quick-release carpet tile backing. Therefore, claim 21 is also rejected over the cited prior art.

### ***Conclusion***

9. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
June 5, 2007